

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs March 14, 2001

STATE OF TENNESSEE v. JAKE CHRISTOPHER REYNOLDS

Direct Appeal from the Circuit Court for Giles County
No. 8404-05 Robert L. Jones, Judge

No. M2000-00210-CCA-R3-CD - Filed May 23, 2001

The defendant appeals his convictions and sentences for attempted voluntary manslaughter and reckless endangerment. After review, we hold that sufficient evidence supports his convictions. However, we hold that an adjudication of guilt must precede the date of the instant offenses to qualify as a 'prior conviction' for sentencing purposes. Therefore, we reverse the defendant's sentence and remand the case to the trial court for imposition of a new sentence.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed in Part;
Reversed and Remanded in Part**

JOHN EVERETT WILLIAMS, J., delivered the opinion of the court, in which DAVID G. HAYES and JAMES CURWOOD WITT, JR., JJ., joined.

Hershell D. Koger and W. Howell Forrester, Pulaski, Tennessee, for the appellant, Jake Christopher Reynolds.

Paul G. Summers, Attorney General and Reporter; Jennifer L. Bledsoe, Assistant Attorney General; T. Michel Bottoms, District Attorney General; and Richard H. Dunavant and Patrick S. Dunavant, Assistant District Attorneys General, for the appellee, State of Tennessee.

OPINION

The defendant, Jake Christopher Reynolds, appeals his convictions of attempted voluntary manslaughter and reckless endangerment, violations of Tennessee Code Annotated sections 39-13-211, -12-101 and 39-13-103, respectively. The defendant was found guilty of these crimes by a Giles County jury on August 10-11, 1999, and was sentenced on September 27, 1999, to eleven (11) years for the attempted voluntary manslaughter and four (4) years for reckless endangerment, as a Range III offender, to be served in confinement. The defendant's appeal is properly before this court and the defendant asserts that the evidence was insufficient to support his convictions and that the trial court incorrectly sentenced him.

Facts

For purposes of adequately reviewing the sufficiency of the evidence, we are providing a detailed summary of the facts as they were adduced at trial. On August 24, 1997, at approximately 2:00 a.m., Officer Frank Barnes of the Pulaski Police Department responded to a domestic call at 628 Childress Street, the home of James and Shonda Marsh. Upon arrival, Officer Barnes spoke with Shonda Marsh (the defendant's sister), Kyle Freeman, and the defendant. He was told there had been a domestic argument between James and Shonda Marsh. However, James Marsh was not at the residence when the officer arrived. The officers determined that no physical altercation had taken place and no weapons were present. Shonda Marsh did not appear upset.

Later that morning, at approximately 2:45 a.m., Officer Barnes responded to a second call at 628 Childress Street. An anonymous caller stated that an officer should be sent to the address because of possible trouble. As Officer Barnes approached the residence, he saw the defendant running towards him with a gun in his right hand. At the same time, Officer Barnes heard five or six rapid fire gunshots. The bullets ricocheted and whizzed past his patrol car, and he determined that someone was shooting at the defendant.

Officer Barnes saw the defendant give a "hitch" and was not not sure whether the defendant tripped or was struck in the leg by a bullet. The defendant ran through a gap in a fence into the yard at 618 Childress Street. Officer Barnes exited his patrol car, drew his weapon, and ordered the defendant to stop. The defendant ran to a corner of the house and threw down his gun. Sergeant Dean Glossup and Officer Douglas Springer arrived, and Officer Barnes took the defendant into custody. The defendant informed the officers that he had been shot, stating, "I shot James Boy (a.k.a. James Marsh) and he shot me in the leg." The officers then called for an ambulance.

Officer Barnes then transferred the defendant to Sergeant Glossup and Officer Springer and ran approximately 75 to 100 yards to the residence at 628 Childress Street. He observed James Marsh standing with his hands on his knees, "bleeding profusely." Marsh was bleeding from his throat, chest and forearm. He also had a back injury, which Officer Barnes did not notice at the time. Officer Barnes checked Marsh for a weapon, called for an ambulance, and started applying first aid. Other officers then arrived and helped administer first aid to Marsh, who was then transported to the hospital.

In the meantime, Sergeant Melissa Thomas responded to a call at Scott Market, which was located on North First Street, approximately 100 to 150 yards from the shooting. Upon arriving at the market, she found Marie Brown, James Marsh's sister, who had been shot through the "fatty portion of her arm." Sergeant Thomas stayed with Ms. Brown until an ambulance arrived.

Deputies Jim Story and Tommy Chapman maintained the crime scene at 628 Childress while Officer Barnes ran back down the street to 618 Childress. Officer Springer was standing in the street with the defendant while ambulance personnel administered first aid. Officer Barnes informed the defendant that he was under arrest and then walked to the back of the fence where he recovered a

Black Oak 59, a nine-millimeter pistol, which he placed in a bag. The defendant was later transported to the hospital. Officer Barnes and Sergeant Thomas secured the scene at 628 Childress Street. Officer Barnes found spent shell casings and blood on the sidewalk and front porch of the residence.

Investigator Joel Robison arrived on the scene and began collecting evidence and taking photographs. He also interviewed the victim and witnesses. In addition to the defendant's nine-millimeter pistol, shell casings, and a cigarette case, a small bag of marijuana was also found on the scene. Investigator Robison located four bullet holes that were caused by the defendant's weapon.

Later that morning, at approximately 7:50 a.m., Investigator Robison interviewed the defendant at the Pulaski Police Department. The defendant was advised of his Miranda rights and signed a waiver. He stated: "I went over to my sister's house and the police came and everybody left. After a while James Boy came back and had a gun wanting to get in the house. She told me that she did not want him in the house. He stood there and had the gun like he was coming in the house. I shot him and then somebody shot me and I ran." He stated that he was four or five feet away when he shot James Marsh, and James was "going down" after the first shot. He stated that he was walking toward James and was "right up on him" when he fired the other shots, and he did not think James could have shot at him. During the interview, after the written statement was concluded, the defendant told Investigator Robison that he intended to kill James Marsh.

Investigator Robison took a statement from one of the victims, James Marsh, on November 4, 1997. James Marsh had been shot in the jaw, shoulder, chest, and arm and was placed in intensive care. He had a pistol that was never recovered, although the police questioned everyone on the scene. James was also missing money and his wedding ring. Investigator Robison did not know who shot the defendant, and it was his opinion that the defendant was shot with a smaller caliber pistol.

Marie Brown, James Marsh's sister, testified that James called for her to come to the residence on Childress Street. She was accompanied by Brenda Gail Lyons. Shonda Marsh, Kyle Freeman, and the defendant were already at the residence when she arrived. As they were conversing, James Marsh arrived and attempted to enter the house. The defendant blocked the door and told James that he was not going to let him in. The defendant stated: "James, you're not coming in because my sister; My sister don't want you in here." Ms. Brown testified that James stated that he was going in because the house was his. Brown and Lyons decided to leave the residence, and on the way out, Ms. Brown advised the defendant to leave. She stated, "Let's go because they're married, and there's just no sense in us getting involved in this."

Everyone stepped outside and began arguing in the yard. Ms. Brown attempted to persuade her brother, James, to leave; however, he would not. Shonda Marsh stepped in between the defendant and James in an attempt to stop them from arguing. Toby Howard, Brown's other brother, picked up Shonda Marsh and carried her back inside the house. At that point, Brown and James Marsh were standing side by side. The defendant and Freeman were leaned against a car directly

in front of them. Brown was trying to persuade James to get into Lyons' car, and the defendant began shooting. Brown ran and was shot in the arm. She told the defendant that he shot her. As she was running, she looked back and saw the defendant walk up to James and shoot him. At that time, James was still standing. Brown jumped into a ditch alongside Freeman, crawled up a hill, ran to the "Consumer Service Station," and asked someone to call an ambulance. Sergeant Thomas arrived and assisted her. Brown testified that she did not see her brother, James Marsh, with a gun. She testified that she heard approximately nine shots fired that night.

Toby Howard, James Marsh's brother, testified that James called him to the residence to move some furniture. The defendant would not let James in the house, and the two began arguing. Howard went inside the house to speak to Shonda. The argument escalated and all parties moved outside. Shonda stepped in between James and the defendant, and Howard carried her back into the house. He then heard gunshots, walked outside, and saw his brother sitting on the ground. James got up and walked towards him stating that he had been shot. James then walked over and leaned against a car. Howard knew that his brother had been drinking; however, he did not see him with a gun.

James Marsh testified that he lived with his wife, Shonda, on the weekends because he was on parole in Nashville. Earlier in the day on August 24, 1997, he and Shonda had been fighting, and she had called the police. He left the residence and walked across the street to his brother's house. After the police left he walked back across the street to 628 Childress, and the defendant would not let him in. James Marsh stated that he was "really drunk" and did not know why he was trying to get into the house. He also testified that he had "probably taken some pills to help him stay awake." He thought his sister, Marie Brown, pulled him away from the door, and they started walking away. He did not remember if he heard any gunshots. He noticed that his hand and mouth were bleeding. He remembered telling Officer Barnes that he was dying. Three or four days later, he realized that he had in fact been shot four times.

James Marsh recalled having the gun in his pocket. He did not recall if he took the gun out of his pocket and waved it around. He stated that he was "too drunk" to know much about what was going on around him. He could not remember if he was facing the defendant at the time of the shooting. In his statement to Investigator Robison, James Marsh stated that he saw the defendant pointing a gun at him and that his gun was "hanging out of his pocket." He testified that he was heavily medicated at the time he gave the statement and based some of the information on what others had told him. The state then rested.

The defendant's first witness was Shonda Marsh, wife of James Marsh and sister of the defendant. Shonda Marsh testified that prior to the shooting, James Marsh had been at the residence the entire day and had "jumped on her." He had also been drinking. She attempted to locate her brother, the defendant, because she was scared and wanted him to spend the night at the house. She claimed that when the defendant arrived, she and James were arguing in the kitchen and James pulled out a black pistol. The defendant told James to leave, and James walked across the street to his brother's house.

Shonda Marsh testified that she and the defendant walked out the front door, and the defendant walked to his car, which was parked in front of the house. She claimed that the defendant “just stood at his car,” and James walked into the middle of the street and pointed a gun at them. James and the defendant then exchanged words. The police arrived and James walked back to his brother’s house.

Shonda Marsh stated that she spoke with Officer Barnes and claimed to have told him that James had been in the kitchen waving a gun. She also claimed that she told him James was in the middle of the street pointing a gun. She testified that Officer Barnes did not check anything, and she told him that she did not think James would be back.

Shonda Marsh testified that after police left, James walked back across the street and attempted to enter the house. The defendant was standing in the doorway and told James that he would not let James in because Shonda did not want him in the house. She testified that Marie Brown, Kyle and another woman were also in the house and attempted to leave. She was standing behind the defendant, and Brown was standing on the porch. She claimed that James pulled his gun out, and she stepped in between him and the defendant. She could not stop them and ran into the house to call police. She heard gunshots, walked outside, and saw James walking towards her. He told her that he was dying.

Shonda Marsh admitted that she lied in her statement to Investigator Dickey. She told him that she did not see a gun. However, she stated that she lied because Marsh was on parole, and she wanted to protect her brother. She also stated that she was in shock at the time and might have said anything. Shonda Marsh testified that after being subpoenaed, she told the District Attorney that she lied in her first statement. However, she admitted that she did not try to contact Investigator Robison or anyone else in an attempt to change her statement prior to being subpoenaed.

Kyle Freeman testified that he was with the defendant earlier that night, and they had attended a party. They were having car trouble and stopped at Shonda Marsh’s house to borrow her car. Freeman testified that Shonda, James Marsh, and Toby Howard were in the house, and James and Shonda were arguing. Freeman testified that the defendant asked James to leave the residence, and they began arguing. He claimed to have seen a gun in James’ hand and that James threatened the defendant. Someone called the police and James left before they arrived. Freeman spoke with Officer Barnes and claimed to have told him that there could be trouble because James was angry. He also claimed that he told Officer Barnes that James had a gun.

Freeman testified that, James came back to the residence after the police left. He stated that he and the defendant were standing next to a car, and that James had the gun down to his side. Freeman testified that the defendant “raised up off the car” and began shooting. He saw the defendant walk towards James and continue shooting. After the defendant stopped shooting, Freeman heard five or six more shots. He did not think that James fired any shots. He ran and jumped into a ditch. Freeman admitted that he had been drinking and smoking marijuana prior to

the shooting. He also admitted that he told police that he did not see the defendant or James with a gun prior to the shooting.

The defendant testified on his own behalf. He testified that his sister, Veronica, told him that Shonda was looking for him. When he arrived at Shonda's house, she and James Marsh were arguing, and James had a gun in his hand. The defendant testified that he and James stepped outside and exchanged words. As the police arrived, James walked across the street. He testified that Shonda spoke to the officer. After police left the residence, James' sister and another lady arrived. The defendant testified that he and Kyle Freeman were leaving the residence, and his car would not start. He asked to borrow Shonda's car. As he walked to her car, James and his brother were walking back across the street towards the house. The defendant testified that he walked back inside the house and asked Shonda if she wanted James in the house, and she replied no. He then stood in the door and told James that he would not let him in the house.

The defendant testified that Marie Brown and the other lady attempted to leave the residence, and they all began arguing. He claimed that James had the gun in his hand, and Brown attempted to persuade James to leave. The defendant stated that as James and Brown walked into the yard, he walked around his sister's car, leaned up against it and began shooting. He claimed that James had the gun and had been "whooping and hollering about, 'What are you going to do?'" He also claimed that James pointed the gun at him several times, and he was in fear for his life. He stated that his gun was hidden in his waist band where no one could see it. The defendant admitted that he ran towards James and shot him, and then his gun jammed. He testified that he thought someone else was also shooting. He was then shot and ran towards Thomas Street, and Officer Barnes apprehended him.

The defendant admitted that he had been drinking prior to the shooting. He stated that he could not tell whether James Marsh had been drinking or taking drugs. On cross-examination, the defendant stated that James had the gun out approximately 30 to 35 minutes and never fired. In his statement to police, the defendant stated that he was four or five feet away from James when he shot him. However, he later admitted that he did not know how far away he was. He also admitted that Marie Brown was standing close to James.

The defendant stated that James went down after the first shot, and claimed that he did not shoot James in the back. The defendant stated that he stood over James and shot him while he was on the ground. He admitted that he would have continued to fire if his gun had not jammed. He stated that he was shot about the time his gun jammed, and he ran. He admitted that he tried to discard his weapon. The defendant also admitted that he first told police, "I shot James Boy, and he shot me." However, in a later statement, he stated that James could not have shot him. When asked if the statement was correct, the defendant replied: "I know James Boy had a gun. I know I got shot. I don't know who shot me." Following the close of the proof, the jury found the defendant guilty of attempted voluntary manslaughter for shooting James Marsh and reckless endangerment for shooting Marie Brown.

The court held a sentencing hearing on September 27, 1999, and sentenced the defendant as a Range III offender on both the Class D and Class E felonies to eleven (11) years and three (3) years, respectively. This offender status was figured based upon felonies that the defendant pled guilty to on August 26, 1997, two days after the instant offenses. The trial court also denied the defendant any alternative sentence. The defendant's appeal is now before this court, and the defendant contends that the evidence was insufficient to support his convictions and that the trial court incorrectly sentenced him as a Range III offender.

Analysis

A. Sufficiency of the Evidence

The defendant first contends that the evidence was insufficient to support his convictions. Although originally indicted for attempted first degree murder and for aggravated assault, the jury convicted the defendant of the lesser-included offenses of attempted voluntary manslaughter and reckless endangerment. We review challenges to sufficiency of the evidence according to well-settled principles. A guilty verdict by the jury, approved by the trial judge, accredits the testimony of the State's witnesses and resolves all conflicts in the testimony in favor of the State. State v. Cazes, 875 S.W.2d 253, 259 (Tenn. 1994). Although an accused is originally cloaked with a presumption of innocence, a jury verdict removes this presumption and replaces it with one of guilt. State v. Tuggle, 639 S.W.2d 913, 914 (Tenn. 1982). Hence, on appeal, the burden of proof rests with the defendant to demonstrate the insufficiency of the convicting evidence. Tuggle, 639 S.W.2d at 914. On appeal, "the [S]tate is entitled to the strongest legitimate view of the evidence as well as all reasonable and legitimate inferences that may be drawn therefrom." Id. Where the sufficiency of the evidence is contested on appeal, the relevant question for the reviewing court is whether any rational trier of fact could have found the accused guilty of every element of the offense beyond a reasonable doubt. Jackson v. Virginia, 443 U.S. 307, 319, 99 S. Ct. 2781, 2789, 61 L. Ed. 2d 560 (1979). This court may not substitute its own inferences "for those drawn by the trier of fact from circumstantial evidence." State v. Matthews, 805 S.W.2d 776, 779 (Tenn. Crim. App. 1990). In concluding our evaluation of the convicting evidence, this court is precluded from reweighing or reconsidering the evidence. State v. Morgan, 929 S.W.2d 380, 383 (Tenn. Crim. App. 1996).

Under Tennessee statutory law, voluntary manslaughter is defined as "the intentional or knowing killing of another in a state of passion produced by adequate provocation sufficient to lead a reasonable person to act in an irrational manner." Tenn. Code Ann. § 39-13-211(a). A person acts with intent "when it is the person's objective or desire to engage in the conduct or cause the result." Tenn. Code Ann. § 39-11-302(a). A person commits a knowing act when they are "aware that the conduct is reasonably certain to cause the result." Tenn. Code Ann. § 39-11-302(b). To commit the offense of criminal attempt, a person, acting with the requisite culpability required for the offense,

- (1) Intentionally engages in action or causes a result that would constitute an offense if the circumstances surrounding the conduct were as the person believes them to be;
- (2) Acts with intent to cause a result that is an element of the offense, and believes the conduct will cause the result without further conduct on the person's part; or
- (3) Acts with intent to complete a course of action or cause a result that would constitute the offense, under the circumstances surrounding the conduct as the person believes them to be, and the conduct constitutes a substantial step toward the commission of the offense.

Tenn. Code Ann. § 39-12-101.

The evidence at trial showed that the defendant pointed his gun toward the victim and fired several times. By way of his own testimony, he admitted that he shot the victim and intended to do so. Not only did the jury hear evidence that the defendant intentionally shot the victim, but they also heard evidence that the defendant intended to kill the victim. This clearly showed that the defendant committed an intentional or knowing act. The jury ultimately convicted the defendant of attempted voluntary manslaughter as a lesser-included offense of attempted first degree murder. The evidence at trial showed that the defendant and the victim were engaged in an altercation and the victim was carrying a gun. This evidence clearly supported the jury's conclusion that the defendant was adequately provoked by the victim, causing him to act in the irrational manner that he did. Thus, sufficient evidence exists to support his conviction of attempted voluntary manslaughter.

The defendant was also convicted of reckless endangerment as a lesser-included offense of aggravated assault for shooting Marie Brown. Reckless endangerment is defined in Tennessee Code Annotated as follows:

A person commits an offense who recklessly engages in conduct which places or may place another person in imminent danger of death or serious bodily injury.

[R]eckless endangerment committed with a deadly weapon is a Class E felony.

The same evidence that supports the defendant's conviction for attempted voluntary manslaughter supports his conviction for reckless endangerment. The evidence was uncontroverted that the defendant shot at victim James Marsh and hit Marie Brown in the arm. This clearly placed Ms. Brown in imminent danger of death or serious bodily injury and was done so with a deadly weapon, the hand gun. Therefore, sufficient evidence also exists to support the defendant's conviction for reckless endangerment as a Class E felony. See Tenn. Code Ann. § 39-13-103(b).

The defendant asserts, as he did at trial, that the evidence presented supports his defense that he was acting in self-defense. He claims that because victim James Marsh had a gun and was acting in such a reckless manner, that his actions were justified as he was in fear for his life. However, the jury heard all the evidence and obviously believed that the defendant was merely provoked by victim

James Marsh and was not in fear for his own life. The evidence clearly supports the jury's rejection of the defendant's self-defense claim. Therefore, after reviewing the evidence in the light most favorable to the State, we hold that sufficient evidence exists to support the jury's findings of guilt beyond a reasonable doubt.

B. Sentencing

The State agrees with the defendant's claim that the trial court erred in sentencing him as a Range III offender. The present offenses were committed on August 24, 1997. Two days later, on August 26, 1997, the defendant pled guilty to six (6) felonies that were committed on various dates prior to the instant offenses. The State sought to enhance the defendant's sentence based upon these six (6) felonies. The trial court found that the defendant had previously been convicted of these six felonies, thereby classifying him as a Range III offender.

A 'prior conviction' is defined by statute as a "conviction for an offense occurring prior to the commission of the offense for which the defendant is being sentenced." Tenn. Code Ann. § 40-35-107(b)(1). The Tennessee Supreme Court, in State v. Blouvet, 904 S.W.2d 111, 113, (Tenn. 1995), held that a 'prior conviction' is "a conviction that has been adjudicated prior to the commission of the more recent offense for which sentence is to be imposed."

It is clear from the record that the six felony convictions dated August 26, 1997, which the trial court used to classify the defendant as a Range III offender, were not prior convictions at the time of the instant offenses, they were merely charges. Therefore, the defendant's sentence is reversed and the case is remanded to the trial court for imposition of a new sentence.

Conclusion

After review of the record, we hold that sufficient evidence exists to support the defendant's convictions for attempted voluntary manslaughter and reckless endangerment. However, we hold that an adjudication of guilt must precede the date of the instant offense to qualify as a 'prior conviction.' Therefore, we reverse the defendant's sentence and remand the case to the trial court for imposition of a new sentence.

JOHN EVERETT WILLIAMS, JUDGE